

Appeal Decision

Site visit made on 12 February 2020

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd April 2020

Appeal Ref: APP/H1515/W/19/3239606

Regent House, Hubert Road, Brentwood, Essex CM14 4JE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr R Parkinson, Brentwood Apartments LLP against the decision of Brentwood Borough Council.
- The application Ref 18/01601/OUT, dated 9 October 2018, was refused by notice dated 2 July 2019.

The development proposed was originally described as 'outline application within carpark of existing residential block comprising 31 flats, including 11 affordable units and parking provided at a ratio of 0.9 spaces per dwelling'.

Decision

1. The appeal is allowed and planning permission is granted for 31 flats, including 11 affordable units and parking provided at a ratio of 0.9 spaces per dwelling at Regent House, Hubert Road, Brentwood, Essex CM14 4JE in accordance with the terms of the application, ref 18/01601/OUT dated 9 October 2018, subject to the conditions set out in the attached schedule.

Procedural Matter

2. The appeal seeks outline planning permission. Approval is sought for matters of access, layout and scale and I have considered the appeal on this basis. Appearance and landscaping are reserved matters and therefore while I have had regard to the plans submitted as part of the application, I have regarded details of the appearance and landscaping of the development as illustrative.
3. The description of development in the banner heading above is taken from the planning application form. I have adjusted the description in the formal decision to remove words that are superfluous to the development itself.

Main Issues

4. The main issues in this appeal are:
 - i) the effect of the proposed development on the character and appearance of the area; and
 - ii) the effect of the proposed development on the living conditions of the occupiers of Regent House and of the proposed dwellings, with particular regard to outlook and privacy.

Reasons

Character and Appearance

5. Regent House is a nine-storey building fronting Hubert Road which was formerly used as offices but which has been recently converted to flats. The appeal relates to land which currently forms part of the car park associated with this building. To the boundaries of the car park are a number of trees, with a further area of relatively dense tree cover separating the appeal site from the two-storey dwellings which are located on La Plata Grove to the east.
6. Close to its junction with London Road, Hubert Road provides access to The Beeches, a senior living development of linked residential blocks which are up to four-storeys in height. Further from London Road, Hubert Road also serves an estate of buildings in mixed commercial uses which are located to the south of the appeal site. These have typically large footprints set within areas of surface parking, although there is variation in the overall scale of the buildings and the extent of spacing around them. Despite some tree cover, the rear of two-storey and three-storey residential buildings fronting London Road are also visible where they back onto Hubert Road opposite Regent House. Together with the petrol filling station located at the junction of Hubert Road with London Road, these varied uses and their mixed scale, architecture and layout give the area surrounding the appeal site a highly diverse character.
7. The appeal proposes construction of a seven-storey building providing 31 flats with provision shown for parking at ground floor level. The building would be orientated broadly parallel to Regent House, and would have a stepped footprint. The top 2 floors would be offset from the front of the building to project deeper to the rear than the lower floors.
8. In the context of the existing mix of residential and commercial uses on Hubert Road and the current use of Regent House as flats, a further residential development of dwellings on the appeal site would not be out of keeping in terms of the general character of the area.
9. Given the height and scale of Regent House, it is currently a notable feature in the surrounding area and is visible in some longer-distance views from parts of Brentwood, including views from the south and east referred to by the Council. The Council have suggested that the existing height of Regent House is out of character with its surroundings, but there is significant variation in the height and overall scale of development along Hubert Road and in the wider area. As a result, while Regent House is of greater height than development more usually found nearby, there is no distinctive pattern or characteristic form of development here.
10. The proposed building would also be one of the tallest in the nearby area and I note that this would give some focus to the appeal site. Nevertheless, the presence of two taller buildings on the site and views of these together would not necessarily be harmful.
11. As a consequence of its smaller footprint and significantly lesser height in comparison to Regent House, as well as its position set back from Hubert Road and at a lower ground level to the rear of this neighbour, the proposed building would be subordinate to Regent House. These factors would limit the perceived scale of the development and its visual impact on the site. Moreover, Regent

House would additionally provide for a backdrop or screening of the building from some vantage points and the proposed development would be seen in relation to this existing larger building.

12. While I accept that there would be some views of the proposed development from the surrounding area, it would have no more of an adverse impact on views than the existing development. Rather, the lesser scale and height of the proposed building would offer a counterpoint to Regent House and provide for a visual bridge mediating between this larger building and lower level development in the surrounding area. Taking these factors together, the scale of the proposed building would not be unsympathetic when viewed in relation to its surroundings. I therefore see no reason that the height of the development above that commonly exhibited would result in an unduly prominent or intrusive addition to the site, street scene or in longer-range views, including when viewed together with Regent House.
13. The existing surface parking currently around Regent House provides for openness, but the large extent of this area results in a fairly austere setting to the building and serves to set it somewhat apart from its surroundings increasing its prominence. The proposed building would reduce some of the openness around the existing building. However, significant spacing would be maintained between the existing and proposed buildings and across the site as a whole. The spacing afforded around buildings near to the appeal site varies, and the proposal would lessen some of the sense of isolation of Regent House. Although there would be a change to the balance of built form on the site, given this context, I find that the building would sit comfortably on the site and would not be detrimental to the setting of Regent House.
14. The detailed appearance of the building is a reserved matter. Nevertheless, approval is sought for the scale and layout of the building and the submitted information indicates a relatively simple form that would be sympathetic to the rather plain existing building on the appeal site. Visual interest would nonetheless be added to the building through the stepped footprint and offset roof level, and architectural styles and designs nearby are varied such that this would not be incongruous.
15. The submitted details indicate that significant areas of parking would be retained within the appeal site and I note concerns raised by the Council over the location of space for play and a lack of defensible space to the entrance of the proposed building. However, details of landscaping are reserved for future consideration and I am satisfied that there would be scope to provide defensible space and suitable boundary treatment as part of landscaping of the site, including around the proposed playspace. The layout of development and spacing around the proposed building would also enable a suitable setting to be provided for the proposed building, as well as offer an opportunity to enhance the existing setting to Regent House which is currently dominated by hard surfacing.
16. For all of these reasons, I conclude on this main issue that the proposed development would assimilate with the varied pattern of development on Hubert Road and would not harm the character and appearance of the area. I therefore find no conflict with saved Policy CP1 of the Brentwood Replacement Local Plan 2005 (BRLP) which, amongst other matters, seeks a high standard of design and development that conserves or enhances the character and

appearance of an area and which is compatible with its location and surrounding development.

17. The Council have also referred within their evidence to the Government's National Design Guide: Planning practice guidance for beautiful, enduring and successful places 2019. However, for similar reasons I find no conflict with the underlying purpose of this guidance or with requirements within the National Planning Policy Framework (the Framework) which seek the effective use of land and the creation of well-designed places.

Living Conditions

18. The proposed development would be visible from windows to the rear of Regent House serving dwellings. However, the main parties indicate that the proposed building would be set around 30m from Regent House at its closest point, with the central part of the building set further away. It would also be at a lower land level. With regard to the scale and relationship of the buildings, this separation would be sufficient to provide for open outlook to either side of the building, even for those flats at the lower levels, avoiding an unacceptable degree of enclosure. It would also ensure that the proposed building would not be an oppressive or dominant feature. Accordingly, while the current outlook from dwellings may have informed some residents' decisions to occupy Regent House and there would be a change to this, I am satisfied that outlook for occupiers of Regent House would not be harmfully reduced by the proposal.
19. Windows to the front of the proposed development would face towards Regent House which is larger and which would be on higher ground. However, the ground floor level of the proposed building which would be most affected is indicated as parking rather than dwellings, and given the building's relationship with Regent House including the separation I am similarly satisfied that outlook for occupiers of the proposed development would not be unacceptably harmed.
20. The Council's appeal evidence refers to the amount of light received by occupiers of the appeal site although no such concern is suggested by the reasons for refusal of permission. Nevertheless, with regard to the scale and relationship of the buildings on the appeal site and the separation distance between them, I am also satisfied that levels of light for existing and future occupiers of the site would be suitable and there is no substantive evidence to the contrary.
21. Turning to consider privacy for occupiers of the site, there would be potential views between the existing and proposed building, and these would include views from the upper levels of each building. The main parties have referred to guidance on back-to-back separation distances between dwellings but this is of limited relevance to the appeal before me and I have not been directed to any specific guidance on separation distances which would be applicable to facing flatted developments of the kind proposed by the appeal.
22. In this case, the separation distances between existing and proposed windows on the site would not be unusual in an urban context such as this. Views between the buildings would not be in direct proximity, and the separation would be sufficient to ensure that windows would not provide meaningful views into the interiors of dwellings opposite. As such, there would be a reasonable degree of privacy for occupiers and I am not persuaded that there would be unacceptable overlooking between dwellings on the site, either actual or

perceived. The indicated provision of access and circulation space along much of the front part of the proposed building at all levels would also help to limit the extent of windows to habitable rooms facing Regent House and thus the potential for views between dwellings.

23. For these reasons, I conclude on this main issue that the proposal would provide acceptable living conditions for the occupiers of Regent House and the proposed dwellings, including with regard to outlook and privacy. Accordingly, I find no conflict with BRLP Policy CP1 which includes, amongst other things, a requirement that development does not have an unacceptable impact on the general amenities of occupiers.

Other Matters

24. The proposal would generate some additional traffic, but the Highways Authority have not raised an objection in this regard and there is no convincing evidence before me that the local road infrastructure would be unable to accommodate the resulting traffic movements. Neither is there any firm indication that it would be necessary to upgrade an existing footpath towards the station through the adjacent woodland as a consequence of the proposal.
25. The appeal site's location would enable occupiers of the site to access public transport and facilities by means other than the private vehicle. In this light, I have no reason to disagree with the Council's assessment that parking to serve both Regent House and the proposed development would be suitable according to guidance within the adopted parking standards. While I note comments made by occupiers of Regent House that parking spaces on the existing site have not been allocated, this is not a matter which has a material bearing on my assessment of the planning issues in this appeal.
26. Given the distance to dwellings on La Plata Grove, I am satisfied that the proposal would not cause harm to these neighbours, including by way of overlooking. Any disruption during construction of the development would be for a temporary period only and could be mitigated by careful construction management. There is no compelling information to substantiate concerns that the proposal, including provision of playspace, would give rise to unacceptable noise or anti-social behaviour on the site, or that dwellings which may be occupied by families would be incompatible with the existing dwellings in Regent House.
27. I have no substantive evidence demonstrating that the scheme would cause harm to biodiversity, flooding or drainage problems, or that Japanese Knotweed poses an unacceptable risk. Concerns have also been raised in relation to the impact of development on trees. However, landscaping is a reserved matter and given the proposed layout of the development on the site and existing hardsurfacing, I have no significant reason to consider that the development would cause unacceptable harm to nearby trees.
28. A number of representations advise that purchasers of dwellings within Regent House were unaware of the proposed development, and have referred to the content of sales information that was provided prior to the purchase of dwellings here. Concerns have also been expressed over the management of Regent House and the standards of work carried out at this building, and have suggested that there is no need for the proposal given unsold flats within this development. However, these are not matters which affect my consideration of

the planning merits of the proposal and planning permission would not override any legal rights. The issue of impact on property values has also been raised, but the planning system does not exist to protect private interests such as the value of land or property.

29. I have taken into account comments made by interested parties but none of the other matters raised, either individually or collectively, alter my findings on the main issues.

Conditions and Planning Obligation

Planning Obligation

30. The appellant submitted a planning agreement containing planning obligations made pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) relating to the provision of affordable housing. This agreement is dated 24 February 2020 and is signed and executed as a deed. While it was submitted at a late stage in the appeal, this reflected ongoing discussions between the main parties and was with the support of the Council who are a signatory to the agreement.
31. The agreement is provided in counterpart form in 3 copies, each with one of the following signatories: the owner (Brentwood Apartments LLP); the mortgagee (Mount Street Mortgage Servicing Limited), and the Council (Brentwood Borough Council). While it would be preferable for the agreement to comprise a single document executed by all of the relevant parties, taken together these documents form a valid deed and so will be enforceable. Accordingly, I have taken the agreement into consideration in my decision.
32. The agreement includes a series of obligations which would act to secure 11 affordable dwellings on the site as part of the proposed development. However, the agreement states that these obligations which are set out at Clause 4 of the agreement are conditional upon it being determined as part of the appeal that they are necessary to grant planning permission and satisfy the tests outlined at Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (the CIL regulations).
33. Regulation 122 states that a planning obligation may only constitute a reason for granting planning permission for a development if the obligation is necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. The same tests are outlined at paragraph 56 of the Framework.
34. Saved Policy H9 of the BRLP establishes a requirement for 35% of the proposed development to be affordable housing. The delivery of 11 affordable dwellings would be consistent with this requirement, and in this context I am therefore satisfied that the planning obligations to secure affordable housing on the site are necessary, directly related, and fairly and reasonably related in scale and kind to the proposed development. Accordingly, and for the avoidance of doubt, I find that the planning obligations within the agreement relating to the delivery of affordable housing meet the tests within Regulation 122 of the CIL regulations and the Framework.

Conditions

35. I have considered the conditions suggested by the Council, alongside the appellant's comments on these. Where necessary, I have altered and amalgamated the suggested conditions to ensure compliance with the relevant tests outlined at paragraph 55 of the Framework and to avoid duplication.
36. In addition to standard conditions relating to the submission of reserved matters and the time limits associated with this (1, 2 and 3), I have included a condition specifying the relevant plans for the avoidance of doubt and in the interests of certainty (4). Conditions preventing occupation of the development until full details of the site access and egress to and from Hubert Road have been submitted and implemented (5) and to require provision for visibility splays (6) are necessary and reasonable in the interests of highway safety. Conditions to require cycle storage (7) and distribution of travel information packs (8) are also necessary and reasonable to encourage sustainable travel. A Construction Method Statement, including controls over the hours of working and measures to control the emission of dust and dirt (9), is necessary to ensure highway safety and to safeguard the living conditions of nearby occupiers.
37. The Council have suggested conditions referring to details of the protection of trees and measures to address potential overlooking such as provision of screens to roof gardens as part of future applications. However, these relate to the landscaping and appearance of the development and so can be addressed in the consideration of future reserved matters applications for these aspects or through the imposition of conditions on a reserved matters approval. These conditions are therefore unnecessary, and I have not imposed them.

Conclusion

38. The proposed development would preserve the character and appearance of the area and would provide acceptable living conditions for occupiers of the proposed dwellings and for the occupiers of existing dwellings within Regent House. With the imposition of suitable conditions and the submitted planning obligation agreement, the proposal would accord with the development plan, and material considerations do not lead me to an alternative decision.
39. For the reasons given above, I therefore conclude that the appeal should be allowed.

J Bowyer

INSPECTOR

Schedule of Conditions

- 1) Details of the appearance of the buildings and landscaping of the site (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority before the expiration of 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Site and Location Plan, 1192.001 Rev 2, 1192-099_1, 1192-100, 1192-101, 1192-102, 1192-200, 1192-201, 1192-202, 1192-203 and 1192-300; but only in respect of those matters not reserved for later approval.
- 5) The development hereby permitted shall not be occupied until full details of the proposed vehicular access and egress between the site and Hubert Road, including details providing for reinstatement of kerbing where the existing site access/egress are to be closed, have been submitted to and approved in writing by the local planning authority. The access, egress and any reinstatement of kerbing shall be constructed in accordance with the approved details and be available for vehicular use prior to first occupation of the development hereby permitted.
- 6) The vehicular egress from the site shall not be brought into use until visibility splays are provided to the egress at its junction with Hubert Road measuring 2.4m by 34m in both directions, as measured from and along the nearside edge of the carriageway. The visibility splays shall thereafter be maintained free of obstruction.
- 7) The development hereby permitted shall not be occupied until cycle storage has been provided in accordance with details which have first been submitted to and approved in writing by the local planning authority. The cycle storage shall thereafter be retained in accordance with the approved details.
- 8) The development hereby permitted shall not be occupied until details of the content and distribution of a Residential Travel Information Pack for the development have been submitted to and approved in writing by the local planning authority. Residential Travel Information Packs shall thereafter be provided to the occupiers of each dwelling in accordance with the approved details.
- 9) The development hereby permitted shall not commence until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide for:
 - i) measures to control the emission of dust and dirt during construction; and
 - ii) delivery and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.